

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
HON. DALE A. DROZD, JUDGE

UNITED STATES OF AMERICA, )  
Plaintiff, ) No. 21-CR-22-NONE  
vs. ) STATUS CONFERENCE  
NATHAN DANIEL LARSON, ) COMPETENCY HEARING  
Defendant. )

Fresno, California Friday, January 7, 2022

## REPORTER'S TRANSCRIPT OF PROCEEDINGS

**APPEARANCES OF COUNSEL:**

For the Plaintiff: United States Attorney's Office  
BY: **BRIAN ENOS**  
2500 Tulare Street  
Suite 4401  
Fresno, California 93721

For the Defendant: Wanger Jones Helsley  
BY: **PETER JONES**  
265 East River Park Circle  
Suite 310  
Fresno, California 93720

REPORTED BY: KAREN HOOVEN, RMR, CRR, Official Court Reporter

Proceedings recorded by mechanical stenography, transcript produced by computer aided transcription.

1 Friday, January 7, 2022

Fresno, California

2 8:36 a.m.

3 THE CLERK: The Court calls United States versus  
4 Nathan Daniel Larson. Case number 1:21-CR-22. Scheduled for  
5 status conference, competency.

6 THE COURT: Competency hearing, yes. Please state  
7 your appearances beginning with counsel for the government.

8 MR. ENOS: Brian Enos, United States.

9 MR. JONES: Peter Jones for Nathan Larson, who is  
10 present in court in custody at the jail. We are on video  
11 conference.

12 THE COURT: And in connection with the competency  
13 hearing scheduled for today's date, the Court has, of course,  
14 even before the last appearance on this matter, had received  
15 the forensic evaluation and the forensic addendum prepared by  
16 the United States Bureau of Prisons.

17 At the last appearance, the government requested that  
18 it be allowed to submit supplemental briefing on the  
19 competency issue. It has done so on December 30th, docket  
20 number 62. I've reviewed that brief. The defense has filed a  
21 response brief filed January 4th. Is there anything else I  
22 should have received in connection with the motion?

23 MR. ENOS: No, Your Honor.

24 MR. JONES: No, Your Honor.

25 THE COURT: Before addressing the competency

1 determination, which I'm prepared to do today, and if the  
2 parties agree, to rule on today since it appears to be  
3 unanimous opinion, both by the evaluators at the Bureau of  
4 Prisons as well as counsel for the government and counsel for  
5 the defense, each join in the position that Mr. Larson should  
6 be found by the Court to be competent to stand trial. Some  
7 preliminary issues were raised by the defense in their  
8 response. Some of these -- I think most of them actually were  
9 discussed at the last hearing.

10 THE DEFENDANT: Your Honor, I've not had the  
11 opportunity to review my attorney's filing, the final version  
12 of it. So therefore, I am hindered by this Zoom format from  
13 assisting my counsel in my defense with regard to this matter.  
14 Since he can't pass documents to me.

15 THE COURT: Is Mr. Larson requesting another  
16 continuance, Mr. Jones?

17 MR. JONES: I haven't discussed a continuance with  
18 him. I did go see Mr. Larson last week with a draft of what I  
19 was filing. It was not complete but we did follow that up  
20 with, I think, three phone calls in which he suggested some  
21 additional authorities. And I actually incorporated those.  
22 But at this point, I have submitted what I believe is -- the  
23 Court invited briefing on a public hearing in this case. And  
24 I submitted that. If Mr. Larson would like to talk about a  
25 continuance, I'd like to go into a breakout room and discuss

1 that with him.

2 THE COURT: You want to discuss whether you wish a  
3 continuance of this hearing, Mr. Larson? Do you want to  
4 discuss that with your attorney?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: All right. And just to let you know, the  
7 defense filing, filed by Mr. Jones, who is representing you at  
8 this time in this case, responds to the government's  
9 supplemental brief with respect to competency. It takes the  
10 position that you should be found competent to stand trial.  
11 But objects to some aspects of the report, the Bureau of  
12 Prisons psychological psychiatric report, and definitely makes  
13 clear that the defense does not agree with all aspects of the  
14 evaluation, just with the ultimate conclusion.

15 And then there's -- the entire brief is about three  
16 pages long. And the second half of it is devoted to  
17 addressing issues regarding your personal appearance in court,  
18 which I believe I fully addressed at the last hearing. And no  
19 authority that's been cited to me, in my opinion, has any  
20 persuasive authority whatsoever with respect to any claim that  
21 this is not an appropriate hearing.

22 The CARES Act exemption is limited to certain  
23 proceedings. There is no right to an in-person appearance  
24 before the Court generally for hearing on motions and the  
25 like, which I believe this is akin to. There is no such

1 right, either constitutional or statutory or based upon  
2 federal rules. The holding of a remote hearing on this matter  
3 is completely appropriate and authorized. There is no right  
4 to an in-person appearance, as far as I'm concerned, under the  
5 law. No authority has been cited to me that would persuade me  
6 otherwise.

7 And in terms of -- I addressed this issue at the last  
8 hearing because you were making objections in that regard.  
9 And second of all, this is a public hearing. There's the  
10 suggestion that it's not in the defense papers. And that's  
11 simply incorrect and erroneous. This is a public hearing.  
12 There is a public line. Anyone that wishes to monitor, listen  
13 to these proceedings, know everything that we're talking about  
14 is free to do so. And as you can see on your screen, if  
15 you've got a gallery view, the public line is open. Anyone  
16 can phone in. That number is listed on the Court's website.  
17 It's listed on the publicly available calendars.

18 And finally, I would add, that in the last -- well,  
19 just this week, just since Monday, today is Friday. There  
20 have been seven reported cases of positive COVID-19 infection  
21 among individuals working in the federal courthouse in Fresno.  
22 Seven I believe is the correct number. I have been exposed  
23 and have a test scheduled for later today as well as on the  
24 10th day following the exposure.

25 The Courts of the Central District of California and

1 the Northern Districts of California earlier this week have  
2 ceased all public hearings of any kind, trials or otherwise,  
3 for at least three weeks. The Eastern District of California  
4 has not yet done the same thing. But I am taking that action  
5 in my cases in the Fresno courthouse. Other offices within  
6 that building have closed in light of the surging COVID-19  
7 infection rates in the counties making up our district.

8 And I am making a finding that, through the end of  
9 this month, trials and other proceedings cannot be safely  
10 conducted in the US District Court for the Eastern District of  
11 California in the Fresno courthouse. And I won't even be  
12 conducting -- I'm vacating any trial dates that are set  
13 through the end of this month. And I will not be conducting  
14 any live sentencing or change of plea proceedings, the two  
15 proceedings where a waiver of right to personal appearance is  
16 required under the CARES Act. I will not be setting any of  
17 those requested live appearances in the Fresno courthouse at  
18 least until February. So --

19 THE DEFENDANT: I --

20 THE COURT: I'm not inviting any discussion. You're  
21 represented by counsel at this point. But that's the  
22 situation. And madam clerk, please place Mr. Jones and Mr.  
23 Larson in a breakout room.

24 MR. JONES: Thank you.

25 (Recess while the defendant and Mr. Jones confer in a

1 breakout room.)

2 THE COURT: And let the record reflect that Mr. Jones  
3 and his client, Mr. Larson, are back before the Court. My  
4 apologies, gentlemen, but it's been just about a half hour  
5 since this case was called. The Court has a full calendar  
6 today and must move forward. As I indicated, I'm prepared to  
7 make a competency determination, unless I hear something  
8 differently during argument, and find Mr. Larson competent to  
9 stand trial this morning here on the record. But if he and  
10 his attorney are requesting a continuance, I would grant that  
11 continuance and we'll set it. But we've got to move forward  
12 now.

13 MR. JONES: Thank you.

14 THE COURT: What do you want to do, Mr. Jones?

15 MR. JONES: Well, I want to put an objection on the  
16 record that we've submitted a briefing regarding having a  
17 public hearing at this time for the -- on the competency issue  
18 and --

19 THE COURT: This is -- I have to interrupt you. This  
20 is a public hearing.

21 MR. JONES: Well, I'm just making my record on behalf  
22 of my client. I'm making my record that we object to this.  
23 We believe it's constructively, constructively not a public  
24 hearing because he can't sit next to me, we can't converse  
25 throughout the hearing, he can't be passed motions to read,

1 paperwork. The public can't come in to a courtroom where the  
2 Court can see the faces and they can see the courtroom. And  
3 it's a constructive closure. We want to put that on the  
4 record.

5 THE COURT: Mr. Jones, you don't believe any of that.

6 MR. JONES: I'm submitting that for the record.

7 And --

8 THE COURT: Because it's clearly a public hearing.  
9 Anyone who wishes to may hear everything that we are  
10 discussing. And I've given you almost a full half hour to  
11 consult with Mr. Larson.

12 MR. JONES: Yes. And I appreciate that. I respect  
13 that. And we're grateful for that opportunity. But for the  
14 record, we're submitting that objection. And as far as the  
15 competency hearing is concerned; that is something Mr. Larson  
16 would like more time to discuss with counsel. And so we'd ask  
17 to continue.

18 THE COURT: So on the competency hearing, you're  
19 asking for a continuance of that competency hearing? I want  
20 to be clear that you are requesting a continuance?

21 MR. JONES: Let me say this. I believe it's not  
22 going to make a difference because we are submitting it on the  
23 report. And I'm prepared to proceed. Mr. Larson would like  
24 more time to talk to me about the other issues that we  
25 presented to the Court. I would suggest we proceed on the

1 competency issue and then if there are other matters that need  
2 to be filed or presented, we could do that at a -- set another  
3 hearing for that.

4 THE COURT: Because as I've indicated, I'm  
5 prepared -- if the matter is submitted without further  
6 argument other than what's been filed by the parties, my  
7 intention is to adopt the ultimate conclusion of the Bureau of  
8 Prisons psychologist, find Mr. Larson competent to stand trial  
9 in this case, make that finding on the record and then  
10 proceed.

11 Given that intended ruling, is that what the defense  
12 is requesting? That I proceed with the competency hearing,  
13 have the matter submitted on what's been filed so far and go  
14 forward with the Court making that determination?

15 MR. JONES: Yes.

16 THE COURT: All right. Mr. Enos, is there anything  
17 that you wish to add with respect to the competency hearing,  
18 other than what's been submitted?

19 MR. ENOS: No, Your Honor. But the government  
20 welcomes any questions the Court may have.

21 THE COURT: Mr. Jones, on behalf of Mr. Larson, is  
22 there anything you wish to add other than what you've  
23 submitted in writing?

24 MR. JONES: No.

25 THE COURT: Is the matter submitted for decision?

1                   MR. JONES: Yes.

2                   MR. ENOS: Yes, Your Honor.

3                   THE COURT: In making the competency determination,  
4 this Court is guided by well established standards. The Ninth  
5 Circuit has explained, quote, "We begin with first principles

6                   The constitution provides criminal defendants with  
7 the right to be competent during trial."

8                   *Indiana versus Edwards*, 554 US 164 at 170, 2008.

9                   Citing *Dusky*, D-U-S-K-Y, *versus United States*, 362 US 402,  
10 1960 per curiam. And *Droe*, D-R-O-P-E *versus Missouri*, 420 US  
11 162, 1975.

12                   " At all times before his conviction, a defendant must  
13 have a rational as well as factual understanding of  
14 the proceedings against him and sufficient present  
15 ability to consult with his lawyer with a reasonable  
16 degree of rational understanding. *Id.* If a defendant  
17 fails to satisfy either of those requirements, then  
18 the proceedings against him may go no further. *Id.*"

19                   That is a quote from *United States versus Duncan*, 643  
20 F 3d 1242 at 1248, Ninth Circuit, 2011.

21                   See also *United States versus Mikheil*, M-I-K-H-E-L,  
22 889 Fed 3d 1003 at 1037, Ninth Circuit, 2018. Formulating the  
23 question as whether, quote, "due to a mental disease or  
24 defect, the defendant is either unable to understand  
25 the nature and consequences of the proceedings

1 against him or to assist properly in his defense."

2 Quoting *United States versus Garza*, 751 F 3d 1130 at  
3 1134, Ninth Circuit, 2014.

12                    "The government has the burden of demonstrating by a  
13                    preponderance of the evidence that the defendant is  
14                    competent to stand trial."

18                    "In determining competency, the District Court may  
19                    consider psychiatric and psychological evaluation as  
20                    well as the defendant's behavior and demeanor in the  
21                    courtroom."

1 with specific reference to the gravity of the decisions the  
2 defendant faces." *Chavez versus United States*, 656 F 2nd 512  
3 at 518, Ninth Circuit, 1981.

4         In this case, the charges against Mr. Larson are  
5 quite serious. The Court has taken that factor into account.  
6 However, the very detailed and comprehensive forensic  
7 evaluation performed by the US Bureau of Prisons, the report  
8 written by Dr. Shelton and reviewed and signed off on by the  
9 chief forensic psychologist Dr. Matthews, have concluded,  
10 after a thorough and exhaustive review and study of Mr.  
11 Larson, that he -- that while it is highly likely that he will  
12 continue to interject unconventional legal strategies and/or  
13 attempt to disrupt proceedings, that this behavior is most  
14 likely deliberate and goal directive, not derived from any  
15 underlying mental disorder and that, rather, he appears to  
16 have the ability to understand the nature and the consequences  
17 of the Court proceedings against him and to properly assist  
18 counsel in his defense.

19         I would note that, based upon Mr. Larson's conduct  
20 during proceedings before me, while he has attempted to be  
21 polite, I have tried to make it clear to him that while he's  
22 represented by counsel, he has no standing, right, if you  
23 will, to speak out during court proceedings. That he should  
24 speak through his counsel. He has found it at times very  
25 difficult, I think, to comply with that directive. Though I

1 will say he's shown some effort in that regard. I think he  
2 finds it quite difficult to do so.

3           But ultimately the relevant legal question is not  
4 whether a defendant will assist properly in his defense, but  
5 whether he is able to do so. And that is a quote from *United*  
6 *States versus Battle*, 613 F 3d 258 at 263, DC Circuit, 2010,  
7 quoting *United States versus Bachon*, B-A-C-H-O-N, 869 F 2d 653  
8 at 655, First Circuit, 1989.

9           So while I have my concerns about Mr. Larson's  
10 conduct, ultimately the uncontested evidence before the Court  
11 and the only evidence before the Court is -- leads to the  
12 conclusion that he, in fact, has the ability to understand the  
13 nature and consequences of these court proceedings against him  
14 and to properly assist counsel in his defense and I therefore  
15 find him competent to proceed to trial and to engage in these  
16 proceedings leading up to the trial of the case if that  
17 ultimately is what is required. And therefore, I make that  
18 competency determination.

19           If the government believes that anything more than  
20 what I've stated here on the record is appropriate to have in  
21 a written order -- I believe the findings that I've made are  
22 sufficient with respect to the competency determination. But  
23 if the government believes that more should be stated on the  
24 record, the government can certainly present a proposed order.  
25 And I would invite defense counsel to do the same --

1 (Off the record.)

2 THE COURT: I would invite defense counsel to do the  
3 same in submitting a proposed order if defense counsel is of  
4 the belief that any additional or further findings are  
5 appropriate in support of the Court's ultimate conclusion that  
6 Mr. Larson is, in fact, competent to proceed in this case and  
7 proceed ultimately to trial if that's what's determined to be  
8 the action that should be taken.

9 So that resolves the issue of competency. I know  
10 that the -- we do have the forensic addendum, which the  
11 government has taken a position on. Mr. Jones, on behalf of  
12 Mr. Larson, I think makes a good point. At least absent any  
13 authority to the contrary. That forensic addendum, it seems  
14 to me, addresses an issue that ultimately would be determined  
15 were the case to proceed to trial. And it's --

16 MR. ENOS: Agreed, Your Honor.

17 THE COURT: Okay. So I'm not going to rule on any  
18 issue with respect to the defendant's mental capacity at the  
19 time of the alleged conduct. I believe that's appropriate to  
20 ultimately be resolved at a trial in this case if that's where  
21 it ends up.

22 So having found Mr. Larson competent, how do the  
23 parties wish to proceed at this point?

24 MR. JONES: Now that Mr. Larson has been found  
25 competent, he did and has, on a number of occasions, asked to

1 have a *Faretta* hearing in order to be allowed to represent  
2 himself. I've assured Mr. Larson I'm going to make objections  
3 on his behalf as long as I -- they aren't patently frivolous.  
4 But he has his own concerns and you wishes to represent  
5 himself.

6 THE COURT: And Mr. Larson, is that the case? I'm  
7 sorry, sir, you're muted.

8 THE DEFENDANT: Your Honor.

9 THE COURT: I'm sorry, Mr. Larson?

10 THE DEFENDANT: What was your question?

11 THE COURT: Mr. Jones has indicated that you want a  
12 *Faretta* hearing and that you wish to represent yourself. Is  
13 that, in fact, the case?

14 THE DEFENDANT: I do want to represent myself. But  
15 is it the case that my counsel acquiesced to holding the  
16 competency hearing today? Because I never consented to that.

17 MR. JONES: May I put something on the record?

18 THE COURT: You may.

19 MR. JONES: We, after discussing this matter, after  
20 reviewing the reports, Mr. Larson did not want to fight the  
21 competency issue. And I agree with him. There was no point  
22 in continuing that issue.

23 As far as further objections or briefing on the other  
24 issue we raised, we can certainly bring that up again and  
25 continue for a further hearing on that or just set this for

1 status and raise it again at that time. So I don't -- in my  
2 professional opinion, based on there being no contention  
3 against the finding of competency, as I put forth in our brief  
4 and I'll put again on the record, we don't agree with the  
5 reasoning in all respects of Dr. Shelton. But the conclusion,  
6 we did agree with at this time that -- as the Court knows,  
7 that could change. It's an issue that's fluid and could be  
8 raised again. But at this time, being no objection to this,  
9 there's no point in continuing it. So that is why we went  
10 forward today on that issue.

11 THE DEFENDANT: I can explain my point if you want.

12 THE COURT: Well, you're still represented by  
13 counsel, Mr. Jones. I think I figured out that your position  
14 is that this hearing should be conducted in person in a  
15 courtroom. You seem to have some belief that anyone is  
16 interested in your case.

17 THE DEFENDANT: Is it not a high profile case?

18 THE COURT: Maybe it is to you, sir.

19 THE DEFENDANT: In terms of media coverage and so on.

20 THE COURT: Any member of the press that wants to  
21 monitor these proceedings is free to do so and knows exactly  
22 how to do so. And they're on if they wanted to be. In any  
23 event, I'm not engaging you in further discussion.

24 Do you want a *Farett*a hearing? A hearing at which it  
25 would be determined whether you should be allowed to represent

1 yourself.

2 THE DEFENDANT: I want to hold that hearing in  
3 person.

4 THE COURT: If that's your request, I'll set it some  
5 time in the month of February. Is that what you want me to  
6 do?

7 THE DEFENDANT: Sure.

8 THE COURT: You're sure about that?

9 THE DEFENDANT: I don't see the down side because I  
10 don't see what we can really accomplish while all these  
11 pandemic restrictions are going on. I imagine we can't go to  
12 a jury trial if we can't even hold a hearing in person.

13 THE COURT: Well, I -- I think you're wrong about  
14 that. Because --

15 THE DEFENDANT: We're going to hold a jury trial by  
16 Zoom?

17 THE COURT: No. But the case could be advancing.  
18 We're not going to set -- if you were to -- if your lawyer  
19 were to take the position that I should set a jury trial in  
20 this case today. Given the exclusion of time up to today's  
21 date -- and if you were not requesting to represent yourself,  
22 I don't think Mr. Jones would be asking for a jury trial date  
23 before February 1st. In fact, I suspect he'd be asking for at  
24 least a longer period of time than that. Something no sooner  
25 than 60 days from today's date. And while he was doing that,

1 he would be preparing the case for trial.

2 Now, if we don't even address the issue of whether or  
3 not you're going to be allowed to represent yourself until  
4 February, that is going to, therefore, delay the ultimate  
5 setting of a trial date. You understand what I'm trying to  
6 tell you?

7 THE DEFENDANT: Well, Mr. Enos could be preparing  
8 discovery and getting that to us. Where's the supplemental  
9 discovery?

10 THE COURT: All right. Well, you're not going to  
11 engage in -- I'm not going to engage you further because  
12 you're not going to engage me. So --

13 THE DEFENDANT: I did.

14 THE COURT: Mr. Jones, at this point you're still Mr.  
15 Larson's attorney. He's requesting a *Faretta* hearing. I am  
16 making a finding that the ends of justice do not -- and public  
17 health and safety, given the Coronavirus outbreak and the  
18 surging infection rates in the Eastern District of California  
19 and in the Federal Courthouse in Fresno in particular, to  
20 which I've been exposed and am currently undergoing testing to  
21 try to confirm that I haven't contracted the virus. That all  
22 of those factors justify an exclusion of time in the interest  
23 of justice despite the nature of the charges Mr. Larson faces.  
24 As soon as we practically can, any appearance that he's  
25 entitled to be personally present at, of course --

1                   THE DEFENDANT: I'd like to --

2                   THE COURT: Mr. Larson, be quiet. Of course the  
3 Court will accommodate those requests as I have throughout the  
4 pandemic. Where there is no right to an in-person appearance  
5 before the Court, the Court, in consideration of safety  
6 concerns, will continue to conduct those proceedings by way of  
7 Zoom. As Mr. Larson's attorney, do you join in his request  
8 that a *Faretta* hearing be scheduled for February? And if the  
9 situation, in terms of infection rates improves, that the  
10 matter be advanced?

11                  MR. JONES: Yes. I do.

12                  THE COURT: Madam clerk, let's set the matter for  
13 *Faretta* hearing and -- do you want it -- well, and further  
14 status conference.

15                  MR. JONES: Yes.

16                  THE COURT: Including possible scheduling. We'll put  
17 it on calendar for all those purposes. And the first calendar  
18 in February, madam clerk.

19                  THE CLERK: February 4th at nine o'clock.

20                  THE COURT: If the infection rates decrease more  
21 quickly than seems to be the common belief at this time, then  
22 I have no objection to the matter being advanced. But  
23 finally, I should note that I anticipate that this case will,  
24 in the coming days, certainly I would think by next week, now  
25 that Judge Thurston has been confirmed as a United States

1 District Judge, this case, as well as all the other cases  
2 bearing the "none" designation are almost certainly going to  
3 be reassigned to Judge Thurston, who will be presiding over  
4 those cases following their reassignment.

5 So all I would say, Mr. Jones, and Mr. Enos, if the  
6 infection situation in your view changes, you're certainly  
7 capable of contacting Judge Thurston's courtroom deputy and  
8 inquiring whether the *Faretta* hearing and status conference  
9 can be advanced.

10 Anything else we can do in this case today?

11 MR. ENOS: No, Your Honor. Thank you.

12 MR. JONES: No.

13 THE COURT: I'm -- time has been excluded up to this  
14 point under 18 USC Section 3161(h)(1)(A), Local Code A, for  
15 examination and/or hearing with respect to mental incapacity.  
16 And from today's date to the February *Faretta* hearing date, I  
17 am excluding that period of time both based upon Mr. Larson's  
18 request for that hearing, his request that it be conducted in  
19 person, which I will defer at that time to Judge Thurston if  
20 she is assigned to the case.

21 And based -- so the request for a *Faretta* hearing, I  
22 provide as a basis for exclusion under 18 USC Section  
23 3161(h)(1)(D), Local Code E, and in addition, I find that the  
24 interest of justice in public safety compel an exclusion of  
25 time to the February date.

1 Anything further in this case?

2 MR. ENOS: No, Your Honor. But just to clarify, the  
3 second basis is under T4, 3161(h)(7)(A) and (b)(4)?

4 THE COURT: Yes, it is.

5 MR. ENOS: Nothing further from the government, Your  
6 Honor.

7 MR. JONES: Nothing further.

8 THE COURT: Thank you. Mr. Larson, you can let the  
9 guard there know we are done with your case for today.

10 (The proceedings were concluded at 9:32 a.m.)

11

12 I, KAREN HOOVEN, Official Reporter, do hereby certify  
13 that the foregoing transcript as true and correct.

14

15 DATED: 25th of April, 2022 /s/ Karen Hooven  
KAREN HOOVEN, RMR-CRR

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